

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

FILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

JUN 26 2000

THE REGENTS OF THE UNIVERSITY
OF NEW MEXICO.

Plaintiff and Counterdefendant,

R. J. [Signature]
CLERK

vs.

No. CIV 99-0577 JC/WWD

GALEN K. KNIGHT, and individual; and
TERENCE J. SCALLEN, an individual,

Defendants and Counterplaintiffs.

MEMORANDUM AND OPINION ORDER

THIS MATTER comes before the Court on the parties' request for an expanded Order of Reference to the Special Master to conduct an evidentiary hearing and render a report to the Court admissible as evidence at trial as provided in Rule 53(c)(3), Fed. R. Civ. P.

Background

In this Court's *Memorandum Opinion and Order* entered by the Clerk on December 21, 1999 (Doc. 50), the Court determined *inter alia* in response to a motion by the University for either a judgment on the pleadings or summary judgment that Defendants had presented evidence sufficient to rebut, for motion purposes, the presumption of correctness of the United States Patent Office examiner's determination that the patents-in-issue contain no "new matter;" that the question of new matter is a question of fact; and that therefore the issue of whether Defendants were required to execute an assignment could not be determined.

Defendants filed a *Motion for Summary Judgment...on Counts I, II, and III of Plaintiff University's Complaint* (Doc. 111) on March 24, 2000, three months after the Court entered the *Memorandum Opinion and Order* (Doc. 50). Defendants' *Motion for Summary Judgment* (Doc. 111)

152

raises issues substantially addressed in the Court's *Memorandum Opinion and Order* (Doc. 50).

An evidentiary hearing would not achieve the goals of judicial economy and a speedy and inexpensive determination of the action sought by Rule 1, Fed. R. Civ. P., because both parties would be permitted to present evidence at trial substantially similar to evidence likely presented at an evidentiary hearing.

WHEREFORE,

IT IS ORDERED that the *Motion for Summary Judgment...on Counts I, II, and III of Plaintiff University's Complaint* (Doc. 111) is denied.

IT IS FURTHER ORDERED that an evidentiary hearing in connection with that part of the *Motion for Summary Judgment...on Counts I, II, and III of Plaintiff University's Complaint* (Doc. 111) dealing with Count I is moot, and will not be conducted.

IT IS FURTHER ORDERED that questions of fact in connection with the Vitaletheine Patents and Applications are preserved until trial.

IT IS FURTHER ORDERED that the parties will submit a proposed amended scheduling order to Chief Magistrate Judge William W. Deaton on or before July 10, 2000.

DATED this 26th day of June, 2000



CHIEF UNITED STATES DISTRICT JUDGE

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